IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6064 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAGUBHAI AMBALAL PATEL - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

==========

Appearance :
(MR SD PATEL) for Petitioner(s) : 1,MR PJ VYAS for Petitioner(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7
MR PS CHAMPANERI for Respondent(s) : 1,
M/S PATEL ADVOCATES for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgement and order passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/1130 and 1131 of 1984, in dismissing the same and confirming the order passed by the Deputy Collector, Dabhoi in Ceiling Revision Case No.4 of 1984 dtd.4/7/1984.

2.The present proceedings are arising out of Gujarat Agricultural Land Ceiling Act. The petitioner was owner of an agricultural land situated in the Sim of Village Pipaliya, Pavadpur and Kamlapur and he filled in Form showing his agricultural land. The petitioner had a son named Jagubhai and it is the case of

the petitioner that the grand-father of Jagubhai had given some land to him in 1942. That these lands were standing in the name of Jagubhai. On coming into the force the Amending Act, 1972, Jagubhai furnished particulars regarding agricultural lands held by him. A Ceiling Case No.128 of 1976 was registered and after holding an inquiry, the Mamlatdar and Agricultural Lands Tribunal (ALT), Vadodara came to the conclusion that in view of the fact that Jagubhai had two major sons in his family, who were not holding the lands in Account Ceiling Area and passed the judgment to that effect on 30/9/1977. It appears from the record that Ambalal Muljibhai – petitioner herein, father of Jagubhai had also furnished particulars regarding lands held by him and an inquiry was registered as Case No.4 of 1970. It also appears that in the said case, the Mamlatdar and ALT clubbed the land of Jagubhai also, with of his father and held that Ambalal,

Jagubhai and two major sons of Jagubhai were entitled to hold the land to the extent of 4 units and he passed the order accordingly dtd.12/12/1980 holding that the petitioner was not holding the land in excess of ceiling area. The Dy.Collector, Dabhoi, called for the record and proceedings of the Ceiling Case No.4 of 197 in exercise of his suo-motu revisional powers under sec.37 of the Act and passed order dtd.1/10/1981, quashing and setting aside the judgement and order passed by the Mamlatdar and ALT in Ceiling Case NO.4 of 1976, holding that Ambalal and Jagubhai together were entitled to hold land to the extent of two units only and he declared the remaining land surplus and directed the Mamlatdar and ALT to hold further proceedings in the matter. It appears from the record that being aggrieved and dissatisfied with the said order, the petitioner preferred a revision application before the Gujarat Revenue Tribunal being Revision Application TEN.B.A.28

of 1982 and the Tribunal by its judgment and order dtd.24/8/1982 allowed the said revision application, quashing and setting aside the order passed by the Dy.Collector and remanded the matter to decide the matter afresh, after giving an opportunity of being heard to all the interested parties, including the petitioner's son Jagubhai and his and his two major sons and representative of the State Government under sec.42(A) of the Act. It appears that thereafter on remand, the Mamlatdar and ALT, Dabhoi passed an order dtd.24/10/1983 declaring 31 Acres and 14 Gunthas of land as surplus land. It also appears from the record that the said order passed by the Mamlatdar and ALT, Dabhoi dtd.24/10/1983 in Remand Case No.384 of 1983 came to be taken under suo-motu revision by the Dy.Collector, Dabhoi being Ceiling Revision Case No.4 of 1984 and after giving an opportunity to the petitioner, passed order dtd.4/7/1984 declaring 40 Acres and 85 Gunthas

of land as excess vacant land. Being aggrieved and dissatisfied with the said order dtd.4/7/1984 passed in Ceiling Revision Application No.4 of 1984, the petitioners preferred two revision applications being Revision Application Nos.TEN.B.A.1130 and 131 of 1984. It appears that against the said order of the Mamlatdar and ALT, Dabhoi, declaring 31 Acres and 19 Gunthas of land as excess vacant land, the petitioner had also preferred an appeal before the Dy.Collector which came to be dismissed and therefore, both the orders passed by the Dy.Collector, Dabhoi i.e, one in Revision Application and another in appeal preferred by the petitioner challenging the order of the Mamlatdar and ALT, Dabhoi declaring 31 Acres and 19 Gunthas of land as excess vacant. The aforesaid two revision applications came to be filed before the Gujarat Revenue Tribunal. The Tribunal by common judgement and order dtd.8/4/1988

dismissed both the revision applications, confirming the order passed by the Dy.Collector, Dabhoi in Revision Case No.4 of 1984 as well as in Ceiling Appeal No.30 of 1983, declaring 40 Acres and 25 Gunthas of land as excess vacant land. Being aggrieved by and dissatisfied with the common judgement and order passed by the Gujarat Revenue Tribunal dtd.8/4/1988 in Revision Application Nos.TEN.B.A.1130 AND 1131 OF 1984, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

3.Mr.P.J. Vyas, learned advocate appearing on behalf of the petitioner has vehemently submitted that the proceedings were remanded to the Mamlatdar and ALT, Dabhoi by the Gujarat Revenue Tribunal by final judgement and order dtd.24/8/1982 in Revision Application No.TEN.B.A.28 of 1982 and the Mamlatdar and ALT was directed to decide the proceedings afresh,

after giving an opportunity of being heard to all the interested parties including the petitioner's son Jagubhai and his two major sons and representatives of the State Government under sec.42(A) of the Act. Still, the Mamlatdar and ALT, Dabhoi while deciding the Remand Case No.348 of 1983 and deciding the Ceiling Case No.28 of 1982, did not comply with the directions issued by the Gujarat Revenue Tribunal in its judgment and order dt.24/8/82 and did not give an opportunity to the petitioner's Son Jagubhai and his two major sons and declared 31 Acres and 19 Gunthas of land as excess vacant land and therefore, it is submitted that without going into the merits of the case, the matter be remanded to the Mamlatdar and ALT, Dabhoi for deciding the same afresh, after giving an opportunity to the petitioner's son Jagubhai and his two major sons, as directed by the Gujarat Revenue Tribunal while passing judgement and order

dtd.24/8/1982 in Revision Application No.TEN.B.A.28 of 1982.

4.Mr.Pradip Bhate, learned AGP is not in a position to show whether the Mamlatdar and ALT has heard the brothers of the petitioner i.e. Jagubhai and his two major sons, as directed by the Gujarat Revenue Tribunal while passing judgement and order dt.24/8/1982 in Revision Application No.TEN.B.A.28 of 1982. Under the circumstances, the order passed by the Mamlatdar and ALT, Dabhoi in Ceiling Case No.4 of 1976, and order passed in Remand Case No.348 of 1983 dtd.24/10/1983 declaring 31 Acres and 19 Gunthas of land as excess land cannot sustain, as the order passed by the Gujarat Revenue Tribunal is not complied with and the matter is to be remanded to the Mamlatdar and ALT, Dabhoi to decide the matter afresh in accordance with law and on merits, after giving an opportunity of being heard to the

petitioner's son Jagubhai and his two major sons, as directed by the Gujarat Revenue Tribunal in its judgment and order dtd.24/8/1982 in Revision Application No.TEN.B.A.28 of 1982.

5.For the reasons stated hereinabove, the petition succeeds in part. The judgment and order passed by the Gujarat Revenue Tribunal in Revision Application Nos.TEN.B.A.1130 and 1131 of 1984 dtd.8/4/1988, the order passed by the Dy.Collector, Dabhoi in Ceiling Revision Application No.4 of 1984 dtd.4/7/1984, the order passed in Ceiling Appeal No.30 of 1983 and order passed by the Mamlatdar and ALT, Dabhoi in Ceiling Case No.4 of 1976 dtd.24/10/1983, Remand Case No.348 are hereby quashed and set aside and the matter is remanded to the Mamlatdar and ALT, Dabhoi for deciding the same afresh in accordance with law and on merits, after giving an opportunity to

the petitioner's son and his two major sons, as directed by the Gujarat Revenue Tribunal while passing judgement and order in Revision Application No.TEN.B.A.28 of 1982 dtd.24/8/1982, as early as possible, preferably within a period of four months from the date of receipt of writ of this order. Rule is mad absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH,J.)

rafik